IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8444 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESHKUMAR CHANDULAL THAKAR

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR TR MISHRA for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1-2
MR TUSHAR MEHTA for Respondent No. 1-2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/10/2002

ORAL JUDGEMENT

1. This is a petition filed by the petitioner, complaining of not giving him an appointment as Lineman

by the respondent Board inspite of the fact that he is placed at Sl. No. 591 on the select list whereas his juniors have been given appointment to the said post.

2. The petitioner's case is that he was initially appointed as a Vijligar, and thereafter he was working as Apprentice Lineman for quite some time. Thereafter, on completion of training as apprentice, he became eligible for appointment as a regular employee to the post of Lineman in the year 1986, and consequently, the petitioner was placed at Sl. No. 591 on the select list prepared by the respondent Board.

2.1 The grievance of the petitioner is that although his juniors, i.e. persons below him in the select list, have been given appointment, he has been denied the appointment.

3. It will, therefore, become apparent that the controversy is entirely of a factual nature.

4. The respondents have explained in their affidavit-in-reply as to why the petitioner was not given the appointment, looking to the particular facts of his case.

4.1 The respondents have explained that where the apprentices complete their training and became eligible for regular appointments, they are placed on the select list, and whenever vacancies arise and the select list is operated upon to fill such vacancies by making appointment to the regular post, the age bar is also required to be considered. In the petitioner's case, the age bar is 35 years, and that there is no factual dispute that on the date when the petitioner's junior as also senior who were considered and appointed by operating the select list, the petitioner had actually crossed the age bar. The respondents have explained in their affidavit by giving illustrations of two other persons, viz. Shri R.V. Pathak who is placed at Sl. No. 585, that is to say, placed above the petitioner, as also of Shri V.M. Seta who is placed at Sl. No.593, that is to say, placed below the petitioner. At the relevant point of time, i.e. on 17th June 1998, all the three including the petitioner were considered for appointment. All these three persons had completed their apprenticeship training in September 1991. [The precise dates are not relevant in the present context]. However, the date of birth of the petitioner being 1st June 1962 and the age bar being 35 years, the petitioner had become ineligible for appointment due to the age bar on 1st June 1997. Since

the petitioner was being considered for appointment on 17th June 1998, on that date he has crossed the age bar about 13 months ago.

5. Mr. Mishra, learned counsel for the petitioner sought to contend that the respondents have not given the petitioner the benefit of relaxation of the age bar as contemplated by the directions given by the Supreme Court in the case of U.P. State Road Transport Corporation and another vs. U.P. Parivahan Nigam Shikshuks Berozgar Sangh and others [1995 (2) LLJ 854]. In this context, learned counsel for the petitioner pointed out the observations made in paragraph 12 of the said judgment, and particularly sub-para 3 thereof. This particular direction given by the Supreme Court contemplates that:

> "If the age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the servie rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given."

5.1 There is no controversy that the guidelines given by the Supreme Court are required to be followed by the respondent Board. In fact, the respondent's affidavit specifically states that the age bar of 35 years, which is factually held against the petitioner, is only after granting the relaxation which was permissible under various circulars of the respondent Board which are at annexures 'B', 'C' and 'D' to the affidavit-in-reply.

5.2 After having examined these circulars and particularly Annexure 'B', it becomes obvious that the age limit for absorption of Apprentice Lineman against regular vacancies of Helpers is 30 years, whereas with a view to utilise the training imparted to such apprentice, it has been decided that the upper age limit be relaxed upto 35 years in the case of apprentice Lineman. It would, therefore, become obvious that where a post of Lineman was to be filled in by recruitment of persons who were not apprentices, the age limit would be 30 years, which has been relaxed upto 35 years in the case of Apprentice lineman. Thus, the age bar of 35 years which is held against the petitioner is obviously after giving relaxation in his case since he was an Apprentice Lineman.

6. This policy of the respondent Board has been discussed and approved by this Court in an earlier

decision in Special Civil Application No.5302/97 decided on 16th October 1997, a copy whereof is at Annexure 'E' to the respondent's affidavit-in-reply.

7. On the facts and circumstance of the case, therefore, the petitioner in fact was given benefit of the relaxed age bar, and it is the relaxed age bar of 35 years which is held against him when he became due to be considered for appointment on 17th June 1998 together with persons at Sl. No. 585 and 593 in the select list.

8. In the premises aforesaid, the action of the respondent Board in not giving appointment as Lineman to the petitioner is justified. Consequently, there is no substance in the petition, and the same is, therefore, dismissed. Rule is discharged with no orders as to costs.

sd/-
[Y.B. BHATT, J.]
mathew